S.B. Civil Writ Petition No.4384/02

Sita Ram Pareek Vs. Judge, Labour Court & Anr.

Date of Order : 15/04/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. M.F. Baig, for petitioner
Mr. Rakesh Sharma, for respondent

With the consent of parties, this writ petition is finally heard and decided at the stage of admission.

Instant petition has been filed against the award passed by the Labour Court dt.19th February, 2002 whereby the claim of the petitioner-workman was rejected on the premise that despite being retrenched w.e.f. 1st April, 1994 since payment in compliance of Section 25-F was made on 7th February, 1994 and accepted by the workman was considered to be a valid compliance required under Act of 1947.

Facts in brief are that the petitioner-workman was initially appointed on daily wages basis on 22nd July, 1992 and his services were dispensed with by the respondents w.e.f. 1st February, 1994. Against the said retrenchment, the workman raised dispute by submitting application before the conciliation officer and finally the matter was referred by the appropriate government

for adjudication.

Learned Labour Court recorded a finding that the petitioner-workman had worked for more than 240 days in the preceding 12 months from the date of his termination i.e. 1st February, 1994 and recorded further finding that since one month's salary in lieu of notice and compensation required to be paid u/s.25-F of the Act was tendered on 7th February, 1994 six days after termination, was considered to be proper compliance of statutory requirement under law and a reference was answered accordingly. Hence, this writ petition.

Counsel for petitioner submits that conditions referred to u/s.25-F(A&B) of the Act are mandatory and are to be complied with simultaneously before termination is given effect to. Undisputedly, the compensation required under statute was paid on 7th February, 1994 six days after termination which cannot be considered to be compliance under the Act and in support of his contention, counsel has placed reliance on the judgment of this court in **RSRTC Vs. Judge, Labour Court, Jaipur [1984 RLR 981]**.

Respondents have filed reply to the writ petition and supported the finding recorded by the learned Labour Court and Shri R.K. Sharma counsel for respondents

submits that once the workman has accepted the amount of compensation even paid on 7th February, 1994 according to him it is a proper compliance and no error has been committed by the Labour Court in holding it to be compliance required under law requires no interference.

Counsel for respondents further submits that even if finding regarding termination is bad and violative of Section 25-F atleast the workman is not entitled for back wages since he had hardly worked for 2 years on daily wages basis and there is no material placed on record that he was not in gainful employment elsewhere for the period in question.

Counsel for workman, on the other hand, submits that there was no opportunity for him at the relevant time to file any application or placing any material to support that he was not gainfully employed elsewhere for the reason that the Labour Court has arrived to a conclusion in upholding the termination. In my opinion, in the absence of material either way placed on record no effective order can be passed with regard to grant of back wages.

I have considered the submissions of the counsel and perused the material.

This fact remain undisputed that the petitioner's services were terminated w.e.f. 1st February, 1994 and he has completed more than 240 days in preceding 12 months of his alleged termination provided under Section 25-B of the Act and Section 25-F was required to be complied with while terminating his services.

Section 25-F of the Act clearly contemplates that if employer wants to terminate service of the employee/workman, he has to comply with one month's notice or salary in lieu thereof and compensation which is to be computed on the basis of 15 days service of each completed year of service which is required to be paid simultaneously which has also been considered by this court in **RSRTC Vs. Judge, Labour Court, Jaipur [supra]** and is also a requirement under law. The submission made by the counsel for petitioner that workman has accepted the amount of compensation, in my opinion, has no substance. Mere acceptance will not obliterate the statutory obligation casted upon the employer to comply with the mandatory requirement provided under Act. In my opinion, the very finding recorded by the Labour Court in making payment on 7/2/94 is in compliance of Section 25 of the Act is totally perverse and contrary to settled principles of law.

The writ petition is, accordingly, allowed and the award dt.19/2/02 passed by the Labour Court stands set aside and the respondents are directed to reinstate the petitioner-workman in service. Respondents shall ensure the compliance of the order within a period of two months. So far as grant of back wages is concerned, petitioner will be free to file application u/s.33(C)(2) of the Act before the competent authority. No costs.

[Ajay Rastogi],J.

FRB